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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN JACK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 01A02-0603-CR-259

APPEAL FROM THE ADAMS SUPERIOR COURT
The Honorable James A. Heimann, Judge
Cause No. 01D01-0504-FA-1

January 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Stephen Jack appeals his sentence imposed following his plea of guilty to dealing in methamphetamine as a class B felony.

We affirm.

ISSUE

Whether the sentence imposed by the trial court was inappropriate in light of the nature of the offense and character of the offender.

FACTS

On April 10, 2005, Jack, who was a resident of Michigan, was a passenger in a vehicle that was speeding and was pulled over by a police officer in Adams County, Indiana. Jack initially gave the police a false name. After police searched the car, they found methamphetamine, which Jack had brought from Michigan and intended to sell in Ohio. The police also found glass pipes in the car and a tank of anhydrous ammonia in the trunk.

The State charged Jack with Count 1, dealing in methamphetamine as a class A felony;¹ Count 2, possession of anhydrous ammonia or ammonia solution with the intent to manufacture methamphetamine as a class D felony; and Count 3, possession of paraphernalia as a class A misdemeanor. Jack filed a motion to suppress, which the trial court denied. Thereafter, pursuant to Jack's motion, the trial court certified its order denying the motion to suppress for interlocutory appeal; however, this Court did not accept jurisdiction of the interlocutory appeal.

¹ Jack was apparently charged with dealing in methamphetamine as a class A felony because the amount of methamphetamine found weighed more than three grams. See Ind. Code § 35-48-4-1.

On February 22, 2006, five days before trial, Jack entered into a written plea agreement in which he agreed to plead guilty to an amended Count 1—specifically, dealing in methamphetamine in an amount less than three grams as a class B felony—in exchange for the State’s dismissal of Counts 2 and 3. The plea agreement left sentencing open to the trial court’s discretion, and the State recommended that Jack be placed in the CLIFF (Clean Lifestyle Is Freedom Forever) Program. Thereafter, Jack pleaded guilty, and the trial court accepted his guilty plea.

The trial court held Jack’s sentencing hearing in March 2006. During the hearing, Indiana State Police Narcotics Detective Daniel Mawhorr testified that the tank of anhydrous ammonia found in the trunk of the car in which Jack was a passenger was leaking and that anhydrous ammonia was flammable and very dangerous. Jack testified that he had abused drugs—alcohol and methamphetamine—for over twenty years. Jack testified that he attended substance abuse counseling in 1989, 1991, 1992, 1995, 2000, 2003, 2004, and 2005, but that he did not complete the programs and returned to using drugs. Many of these programs that Jack failed to complete were part of his probation or parole and resulted in a violation of such. Jack also admitted that at the time of his arrest for his current dealing in methamphetamine charge, he was on parole for a possession of methamphetamine conviction out of Michigan and that there was a warrant out for his arrest for prior violation of that parole.

The trial court found no mitigating circumstances and found Jack’s criminal history to be a significant aggravating circumstance. During the sentencing hearing and in its sentencing order, the trial court specifically addressed each of Jack’s prior

convictions, all of which occurred in Michigan and included: (1) a 1988 conviction for impaired driving;² (2) 1989 convictions for possession of marijuana and operating under the influence of liquor; (3) a 1990 conviction for unlawful use of a motor vehicle;³ (4) a 1991 conviction for operating under the influence of liquor; (5) a 1993 conviction for attempted unlawful use of a motor vehicle; (6) a 1994 conviction for malicious destruction of property; (7) a 1996 conviction for operating under the influence of liquor-second offense; (8) a 2000 conviction for operating under the influence of liquor-third offense;⁴ (9) a 2002 conviction for possession of methamphetamine; (10) a 2003 conviction for absconding or forfeiting-attempt;⁵ and (11) a 2004 conviction for possession of methamphetamine,⁶ which he committed while on parole from his prior possession and absconding convictions. In its sentencing order, the trial court noted:

² Jack was originally charged with operating under the influence of liquor but pleaded guilty to impaired driving.

³ Jack was originally charged with unarmed robbery but pleaded guilty to unlawful use of a motor vehicle.

⁴ Jack was placed on two years of probation; however, he was alleged to have violated that probation by failing to attend a court-ordered treatment program and by testing positive for methamphetamine. The record reveals that the Michigan trial court revoked his probation and in May 2001 sentenced him to the Michigan Department of Correction for two to five years, with the sentence to begin in January 2003. The record also reveals that Jack was then released to parole in August 2003.

⁵ Jack committed the absconding offense on the day that he was sentenced on his 2002 possession of methamphetamine conviction. The Michigan trial court sentenced Jack to one to two years in prison for the 2002 possession of methamphetamine conviction and the 2003 absconding conviction. Jack testified that he served a total of five months for these two convictions, and the record reveals that he was released to parole in August 2003.

⁶ Jack was originally charged with Count 1, possession of methamphetamine; Count 2, possession of marijuana; Count 3, driving while suspended; and Count 4, false identification to police/license forged but pleaded guilty to Count 1. The Michigan trial court sentenced Jack to 355 days in jail for this second possession of marijuana conviction, and Jack testified that he only had to serve seven months.

As indicated in the Presentence Investigation Report in the list of prior offenses as well as the attached probation violation summary and the parole violation report, the legal system has attempted to rehabilitate [Jack] by administering fines and costs, then counseling, probation, short term incarceration and longer terms of incarceration. All such efforts have failed. [Jack] has at least eleven prior criminal convictions. He has had 3 prior substance offenses including possession of marijuana but more importantly, two prior convictions involving methamphetamine and his last methamphetamine conviction was on June 11, 2004, just ten months before the current methamphetamine offense.

(Vol. I App. 13) The trial court sentenced Jack to the Indiana Department of Correction for twenty years for his dealing in methamphetamine as a class B felony conviction.⁷

DECISION

Jack argues that although he was “a long-time addict who possessed a large amount of methamphetamine” and had prior convictions, the imposition of the maximum sentence was inappropriate and that this Court, pursuant to Indiana Appellate Rule 7(B), should reduce his sentence. (Jack’s Br. 7). Indiana Appellate Rule 7(B) provides, “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

Regarding the nature of Jack’s offense, Jack was a passenger in a vehicle that was pulled over for speeding in Indiana, and Jack initially gave the police a false name when they stopped the car. Jack was found to be in possession of “several packages” of

⁷ After Jack committed the B felony offense to which he pleaded guilty, and before he was sentenced, Indiana’s sentencing scheme was amended—effective April 25, 2005—to incorporate “advisory” sentences rather than “presumptive” sentences. Under the presumptive sentencing scheme that was in effect at the time of Jack committed his offense, the presumptive sentence for a class B felony was ten years with the possibility of ten years being added for aggravating circumstances and four years being subtracted for mitigating circumstances. *See* Ind. Code § 35-50-2-5.

methamphetamine, which he intended to sell in Ohio. (Tr. 24). The police also found a leaking tank of anhydrous ammonia in the trunk of the car, and Detective Mawhorst testified that anhydrous ammonia was flammable and very dangerous.

Regarding Jack's character, as Jack admits in his brief, he is a "long-time [drug] addict[,]" and the PSI indicates that Jack admitted that "starting at the age of 18 until the age of 25 he would use a quarter of methamphetamine once a week, then from the age of 26 to present was using a quarter of meth daily." (Jack Br. 7; Vol. II App. 44). Furthermore, Jack has an extensive criminal history, most of which is drug-related. The record reveals that Jack, who was thirty-nine years old at the time of the offense, has amassed eleven convictions during the sixteen-year period prior to his current offense. Indeed, in the three years prior to his current dealing in methamphetamine offense, Jack was twice convicted of possession of methamphetamine – one of which occurred while he was on parole from the other possession of methamphetamine conviction. The record also reveals that Jack committed the crime of absconding on the very day that he was sentenced on one of his possession of methamphetamine convictions. Moreover, Jack committed the current dealing in methamphetamine offense a mere ten months after he had been convicted of possession of methamphetamine. In addition, at the time Jack was arrested on the current methamphetamine offense, he was on parole for a possession of methamphetamine conviction and already had a warrant out for his arrest for a previous violation of that parole. Despite Jack's extensive and repeated contact with law enforcement, he was not deterred from criminal activity, and he failed to take advantage of multiple opportunities for rehabilitation. In light of Jack's criminal history and

disregard for the law, we conclude that the twenty-year sentence imposed by the trial court was not inappropriate in light of the nature of the offense and his character. *See, e.g., White v. State*, 849 N.E.2d 735, 744-745 (Ind. Ct. App. 2006) (holding that the trial court's imposition of a maximum sentence was not inappropriate where the defendant had repeated contact with law enforcement and had failed to take advantage of several opportunities for rehabilitation), *reh'g denied, trans. denied*.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.